

§ 2.1206 Informal hearings.

Hearings under this subpart will be oral hearings as described in § 2.1207, unless, within fifteen (15) days of the service of the order granting the request for hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written submissions. A motion to hold a hearing consisting of written submissions will not be entertained unless there is unanimous consent of the parties.

§ 2.1207 Process and schedule for submissions and presentations in an oral hearing.

(a) Unless otherwise limited by this subpart or by the presiding officer, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the admitted contentions. These materials must be filed on the dates set by the presiding officer.

(2) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants. These materials must be filed within twenty (20) days of the service of the materials submitted under paragraph (a)(1) of this section unless the presiding officer directs otherwise.

(3)(i) Proposed questions for the presiding officer to consider for propounding to the persons sponsoring the testimony. Unless the presiding officer directs otherwise, these questions must be received by the presiding officer no later than twenty (20) days after the service of the materials submitted under paragraph (a)(1) of this section, unless that date is less than five (5) days before the scheduled commencement of the oral hearing, in which case the questions must be received by the presiding officer no later than five (5) days before the scheduled commencement of the hearing. Proposed questions need not be filed with any other party.

(ii) Proposed questions directed to rebuttal testimony for the presiding officer to consider for propounding to persons sponsoring the testimony. Unless the presiding officer directs otherwise,

these questions must be received by the presiding officer no later than seven (7) days after the service of the rebuttal testimony submitted under paragraph (a)(2) of this section, unless that date is less than five (5) days before the scheduled commencement of the oral hearing, in which case the questions must be received by the presiding officer no later than five (5) days before the scheduled commencement of the hearing. Proposed questions directed to rebuttal need not be filed with any other party.

(iii) Questions submitted under paragraphs (a)(3)(i) and (ii) of this section may be propounded at the discretion of the presiding officer. All questions must be kept by the presiding officer in confidence until they are either propounded by the presiding officer, or until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide all proposed questions to the Commission's Secretary for inclusion in the official record of the proceeding.

(b) *Oral hearing procedures.* (1) The oral hearing must be transcribed.

(2) Written testimony will be received into evidence in exhibit form.

(3) Participants may designate and present their own witnesses to the presiding officer.

(4) Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations or his delegate for that purpose.

(5) The presiding officer may accept written testimony from a person unable to appear at the hearing, and may request that person to respond in writing to questions.

(6) Participants and witnesses will be questioned orally or in writing and only by the presiding officer or the presiding officer's designee (e.g., a Special Assistant appointed under § 2.322). The presiding officer will examine the participants and witnesses using questions prepared by the presiding officer or the presiding officer's designee, questions submitted by the participants at the discretion of the presiding officer, or a combination of both. Questions may be addressed to individuals or to panels of participants or witnesses. No party may submit proposed questions to the

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presiding officer at the hearing, except upon request by, and in the sole discretion of, the presiding officer.

§ 2.1208 Process and schedule for a hearing consisting of written presentations.

(a) Unless otherwise limited by this subpart or by the presiding officer, participants in a hearing consisting of written presentations may submit:

(1) Initial written statements of position and written testimony with supporting affidavits on the admitted contentions. These materials must be filed on the dates set by the presiding officer;

(2) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and testimony of witnesses and other participants, and proposed written questions for the presiding officer to consider for submission to the persons sponsoring testimony under paragraph (a)(1) of this section. These materials must be filed within twenty (20) days of the service of the materials submitted under paragraph (a)(1) of this section unless the presiding officer directs otherwise;

(3) Written questions on the written responses and rebuttal testimony submitted under paragraph (a)(2) of this section, which the presiding officer may, in his or her discretion, require the persons offering the written responses and rebuttal testimony to provide responses. These questions must be filed within seven (7) days of service of the materials submitted under paragraph (a)(2) of this section unless the presiding officer directs otherwise; and

(4) Written concluding statements of position on the contentions. These statements shall be filed within twenty (20) days of the service of written responses to the presiding officer's questions to the participants or, in the absence of questions from the presiding officer, within twenty (20) days of the service of the materials submitted under paragraph (a)(2) of this section unless the presiding officer directs otherwise.

(b) The presiding officer may formulate and submit written questions to the participants that he or she con-

siders appropriate to develop an adequate record.

§ 2.1209 Findings of fact and conclusions of law.

Each party shall file written post-hearing proposed findings of fact and conclusions of law on the contentions addressed in an oral hearing under § 2.1207 or a written hearing under § 2.1208 within 30 days of the close of the hearing or at such other time as the presiding officer directs. Proposed findings of fact and conclusions of law must conform to the format requirements in § 2.712(c).

[77 FR 46598, Aug. 3, 2012]

§ 2.1210 Initial decision and its effect.

(a) Unless the Commission directs that the record be certified to it in accordance with paragraph (b) of this section, the presiding officer shall render an initial decision after completion of an informal hearing under this subpart. That initial decision constitutes the final action of the Commission on the contested matter 120 days after the date of issuance, unless:

(1) Any party files a petition for Commission review in accordance with § 2.1212;

(2) The Commission, in its discretion, determines that the presiding officer's initial decision is inconsistent with the staff's action as described in the notice required by § 2.1202(a) and that the inconsistency warrants Commission review, in which case the Commission will review the initial decision; or

(3) The Commission takes review of the decision sua sponte.

(b) The Commission may direct that the presiding officer certify the record to it without an initial decision and prepare a final decision if the Commission finds that due and timely execution of its functions warrants certification.

(c) An initial decision must be in writing and must be based only upon information in the record or facts officially noticed. The record must include all information submitted in the proceeding with respect to which all parties have been given reasonable prior notice and an opportunity to comment as provided in §§ 2.1207 or 2.1208. The initial decision must include: